

NOTICE OF FINAL RULEMAKING
EXCESS EMISSIONS RULEMAKING PACKAGE
Maricopa County Air Pollution Control Regulations
PREAMBLE

1.

<u>Rules Affected</u>	<u>Rulemaking Action</u>
Rule 100	Amend
Rule 130	New Rule
Rule 140	New Rule

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing and implementing statutes: Arizona Revised Statutes (ARS) §49-406(G), ARS §49-479, and ARS §49-480.

3. **List of all previous notices addressing the proposed rules:**
 - May 21, 1998 Public Workshops were published in Maricopa County's 2nd Quarter 1998 Notice Of Public Workshops And Public Hearings and in Maricopa County's 2nd Quarter 1998 Visibility Newsletter.
 - September 3, 1998 Public Workshops were announced in Maricopa County's 3rd Quarter 1998 Notice Of Public Workshops And Hearings and in the Record Reporter on September 2 and 9, 1998.
 - October 29, 1998 Public Workshops were announced in Maricopa County's 4th Quarter 1998 Notice Of Public Workshops And Hearings and in the Record Reporter on October 7 and 14, 1998.
 - December 17, 1998 Public Workshops were announced in Maricopa County's 4th Quarter 1998 Notice Of Public Workshops And Hearings.
 - June 17, 1999 Public Workshops were announced in Maricopa County's 2nd Quarter Notice Of Public Workshops And Hearings and in Maricopa County's 1st Quarter Visibility Newsletter.
 - December 16, 1999 Public Workshops were announced in Maricopa County's 4th Quarter 1999 Notice Of Public Workshops And Hearings and in Maricopa County's 3rd Quarter 1999 Visibility Newsletter and in the Record Reporter on December 8 and 15, 1999.
 - May 3, 2000 Public Hearing was announced in Maricopa County's 2nd Quarter 2000 Notice Of Public Workshops And Hearings, in Maricopa County's 2nd Quarter 2000 Visibility Newsletter, and will be announced in the Record Reporter. Withdrawn and re-scheduled Public Hearing for July 26, 2000.
 - July 26, 2000 Public Hearing was announced in Maricopa County's 3rd Quarter 2000 Notice Of Public Workshops And Hearings, in Maricopa County's 3rd Quarter 2000 Visibility Newsletter, and in the Record Reporter.

4. **The name and address of agency personnel with whom persons may communicate regarding this rulemaking:**

Name:	Johanna M. Kuspert or Jo Crumbaker, Air Quality Division
Address:	1001 North Central Avenue, Suite #201, Phoenix, AZ 85004
Telephone Number:	602-506-6710 or 602-506-6705
Fax Number:	602-506-6179

E-Mail Address: jkuspert@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

5. An explanation of the rules, including the agency's reasons for initiating the rules:

Due to an administrative error in the notice and posting of the May 3, 2000 Public Hearing, this rulemaking package was withdrawn from the May 3, 2000 Public Hearing and re-scheduled for the July 26, 2000 Public Hearing. The explanation of the rules in this rulemaking package (described below) has not changed from the previous Public Hearing notice.

This rulemaking package is called the **Excess Emissions Rulemaking Package**.

Maricopa County is proposing to delete Section 501 (Emergency Provision) and Section 502 (Excess Emissions) from Rule 100 and is proposing to write each section as an individual rule; Rule 100, Section 501 will become New Rule 130 (Emergency Provisions) and Rule 100, Section 502 will become New Rule 140 (Excess Emissions).

In July 1999, in order to correct a deficiency in its Title V Permit Program, ADEQ was proposing to revise its excess emissions affirmative defense provisions by specifying what a source must do in order to request an affirmative defense for malfunctions, startup, shutdown, and scheduled maintenance. The Environmental Protection Agency (EPA) stated, in the October 30, 1996 Federal Register (61 FR 55910), that to be fully approvable as a federally enforceable Title V Permit Program a State's program could not allow for an affirmative defense for violations beyond those provided by the emergency provisions in 40 Code Of Federal Regulations (CFR) 70.6(g).

Currently, ADEQ is postponing its Excess Emissions Rulemaking process pending further research and discussion. Maricopa County, though, is re-codifying existing excess emission provisions. Maricopa County is deleting Section 501 (Emergency Provision) and Section 502 (Excess Emissions) from Rule 100 and is creating an individual rule for each section; Rule 100, Section 501 will become New Rule 130 (Emergency Provisions) and Rule 100, Section 502 will become New Rule 140 (Excess Emissions). When ADEQ and EPA settle the excess emissions issue, Maricopa County will only have to revise Rule 130 and/or Rule 140 and will not have to revise Rule 100. Additionally, with Section 502 (Excess Emissions) removed from Rule 100, EPA should be able to approve Rule 100 (the final draft - March 31, 2000) into the State Implementation Plan (SIP), which will allow Maricopa County to retain its authority to issue Title V Permits.

From June 1999 through March 2000, Maricopa County conducted (10) Staff meetings, (4) conference calls with EPA, (5) informal work group meetings with industries most affected by these rules, and (2) Public Workshops. See Item #10, in this Notice Of Final Rulemaking, for a description of the changes that Maricopa County is proposing to Rule 100 and for a description of New Rule 130 and of New Rule 140.

6. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this State:

Not applicable.

7. A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rules and where the public may obtain or review the study, all data underlying each study, any analysis of the study, and other supporting material:

Not applicable.

8. Economic information:

The following finding has been made by the Arizona Department of Environmental Quality (ADEQ) on this rulemaking package, and it also applies to Maricopa County:

The Excess Emissions Rulemaking Package will impact all sources and should provide cost-saving benefits for all sources, but major sources will probably be impacted the most and will probably benefit the most.

If the Excess Emissions Rulemaking Package is not implemented and submitted to EPA by mid-2000, Maricopa County may lose its authority to issue Title V Permits. In this case, EPA would become the permitting authority under 40 CFR 71. Since Maricopa County would still be involved with sources in other permitting programs, sources may be subject to "dual regulation". EPA, in addition, would have authority to establish and collect fees from regulated sources.

9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic information described in Item #8 of this Notice Of Final Rulemaking:

Name: Johanna M. Kuspert or Jo Crumbaker, Air Quality Division
Address: 1001 North Central Avenue, Suite #201, Phoenix, AZ 85004
Telephone Number: 602-506-6710 or 602-506-6705
Fax Number: 602-506-6179
E-Mail Address: jkuspert@mail.maricopa.gov or jcrumbak@mail.maricopa.gov

10. A description of the changes between the current/most recent edition of the rules and the final draft rules to be discussed during the Public Hearing scheduled for July 26, 2000:

Maricopa County will discuss the revisions described below (and as shown in the final draft rules) during the Public Hearing before the Maricopa County Board Of Supervisors scheduled for July 26, 2000. See Item #12 in this Notice Of Final Rulemaking for Public Hearing details. Also, see Item #5, in this Notice Of Final Rulemaking, for more details about this rulemaking process.

Significant Issue Discussed During This Rulemaking Process:

- Timing: Since ADEQ and EPA have not resolved the excess emissions affirmative defense provisions issue and since Maricopa County may lose its authority to issue Title V Permits, if the Excess Emissions Rulemaking Package is not implemented and submitted to EPA by mid-2000, Maricopa County is deleting Section 501 (Emergency Provision) and Section 502 (Excess Emissions) from Rule 100 and is creating an individual rule for each section; Rule 100, Section 501 will become New Rule 130 (Emergency Provisions) and Rule 100, Section 502 will become New Rule 140 (Excess Emissions) When ADEQ and EPA settle the excess emissions issue, Maricopa County will only have to revise Rule 130 and/or Rule 140 and will not have to revise Rule 100. Additionally, with Section 502 (Excess Emissions) removed from Rule 100, EPA should be able to approve Rule 100 (the final draft - March 31, 2000) into the State Implementation Plan (SIP), which will allow Maricopa County to retain its authority to issue Title V Permits.

All Sections In Rule 100 Of The Current/Most Recent Edition Of Rule 100 That Are Being Revised In This Rulemaking Package: (Since Rule 130 and Rule 140 are “new”, they are not included in this section.)

- Section 200.47 (Definition Of Excess Emissions)
- Section 200.96 (Definition Of Scheduled Maintenance)
- Section 501 (Emergency Provision)
- Section 502 (Excess Emissions)

11. A summary of the principal comments and the agency’s response to them:

During this rulemaking process, Maricopa County received 1 written comment regarding New Rule 140. Maricopa County did not receive any written comments regarding the proposed revisions to Rule 100 and regarding New Rule 130. Maricopa County’s response to the written comment is written below:

Comment: Rule 100, Section 502 (Excess Emissions): Maricopa County should not remove the existing excess emissions requirements from Rule 100, until Maricopa County is prepared to move forward with New Rule 140. Maricopa County should postpone the proposed changes to Rule 100, Section 502, until New Rule 140 is implemented.

Response: Maricopa County is deleting Section 502 (Excess Emissions) from Rule 100 and is proposing to write the same text as New Rule 140 (Excess Emissions). Maricopa County will regulate excess emissions the same way it is currently regulating excess emissions. However, when the Arizona Department Of Environmental Quality (ADEQ) and the Environmental Protection Agency (EPA) resolve the excess emissions issues, Maricopa County will only have to revise Rule 140 and will not have to revise Rule 100. Additionally, with Section 502 (Excess Emissions) removed from Rule 100, EPA should be able to approve Rule 100 (the final draft - March 31, 2000) into the State Implementation Plan (SIP), which will allow Maricopa County to retain its authority to issue Title V Permits.

12. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rules, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:

Public Hearing: Wednesday, July 26, 2000
 Maricopa County Board Of Supervisors’ Auditorium
 205 West Jefferson Street, Phoenix, Arizona

Call 602-506-0169 for current information. Copies of this Notice Of Final Rulemaking re: Rules 100, New Rule 130, and New Rule 140 will be available at least 30 days before the Public Hearing for public inspection at the offices of the Maricopa County Environmental Services Department, Air Quality Division, 1001 North Central Avenue, #201, Phoenix, Arizona, 85004, Phone 602-506-6794, and on the internet at <http://www.maricopa.gov/sbeap>. A sign language interpreter, alternative form materials, or infrared assistive listening devices will be made available upon request with 72 hours notice. Additional reasonable accommodations will be made available at the Public Hearing to the extent possible within the time frame of the request. Request should be made to 602-506-6794.

13. **Any other matters prescribed by statute that are applicable to the specific agency or to any specific rules or class of rules:**

Not applicable.

14. **Incorporations by reference:**

Not applicable.

15. **The full text of the final draft rules follows:**

Due to the size of this rulemaking package, the final draft rules are located in separate documents.

Note: Draft Rule 100 includes not only the revisions proposed in the Facility Change Rulemaking Package, but also the revisions proposed in the Excess Emissions Rulemaking Package and in the Rule 100 And Rule 500 Rulemaking Package.